Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Allegiance Telecom, Inc., Debtor-in-Possession, Transferor,	)	
	)	
and	)	WC Docket No. 04-45
	)	
XO Communications, Inc., Transferee,	)	
	)	
Joint Application for Consent to a Transfer of Control under Section 214 of the Communications Act of 1934, as Amended	)	

REPLY COMMENTS OF ALLEGIANCE TELECOM, INC. AND XO COMMUNICATIONS, INC.

Allegiance Telecom, Inc. ("Allegiance") and XO Communications, Inc. ("XO" and, together with Allegiance, "Applicants"), by their attorneys, hereby submit this reply in response to the March 19, 2004 filing by Verizon Communications Inc. and its affiliates (collectively, "Verizon") in the above-referenced docket.[1] Applicants filed their Joint Application for Transfer of Control (the "Application") on February 20, 2004 in furtherance of the reorganization of Allegiance under chapter 11 of Title 11 of the U.S. Code (the "Bankruptcy Code"). On March 5, 2004, the Commission placed the Application on Public Notice subject to streamlined processing.[2] Verizon does not ask for the Commission to delay the processing of the Application and does not raise any issue in its comments that would warrant removing the Application from streamlined processing.

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1 *In re Allegiance Telecom, Inc. and XO Communications, Inc. Joint Application for Consent to a Transfer of Control under Section 214 of the Communications Act of 1934, as Amended*, WC Docket 04-45, Comments of Verizon (Mar. 19, 2004) ("Verizon Comments").

2 *In re Allegiance Telecom, Inc. and XO Communications, Inc. Joint Application for Consent to a Transfer of Control under Section 214 of the Communications Act of 1934, as Amended*, WC Docket 04-45, Public Notice (rel. Mar. 5, 2004).

Moreover, Verizon does not provide any justification for the Commission to impose conditions on the proposed transfer of Allegiance's operating subsidiaries to XO. Verizon's submission is no more than a transparent effort by Verizon to pressure Allegiance and its creditors with respect to a possible future private commercial dispute that may arise in the course of Allegiance's ongoing bankruptcy proceedings. As Verizon acknowledges when it speculates as to the steps that Allegiance and XO "may" take in the bankruptcy proceedings,[3] the acts underlying Verizon's claims have not occurred and may never occur. Accordingly, there is no issue ripe for decision by the Bankruptcy Court, under whose procedures and purview such an issue would arise, let alone by the Commission in the context of this transfer proceeding.

The comments thus raise no significant public interest issue or novel question of law, fact, or policy that require additional review by the Commission in the context of this transfer of control proceeding. Moreover, as discussed below, the Bankruptcy Code provides a process for the rejection or assumption of agreements, and there is no basis whatsoever for Verizon's assertion that it is put at risk by the grant of the transfer Application on a streamlined basis prior to the conclusion of that process and the resolution of any disputes related thereto. Accordingly, the Commission should continue to accord the Application streamlined treatment and should reject Verizon's request to impose conditions on the proposed transaction.

I. THE APPLICATION REMAINS ELIGIBLE FOR STREAMLINED TREATMENT

When it placed the Application on Public Notice, the Commission properly concluded that the Application was presumptively eligible for streamlined processing under Section 63.03(b)(2)(i) of the Commission's Rules, 47 C.F.R. § 63.03(b)(2)(i). Nothing in Verizon's comments changes that earlier correct conclusion.

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3 Verizon Comments, at 3.

The Commission's streamlining rules were implemented to reduce the regulatory burden on carriers who file "non-controversial" domestic transfer applications that do not raise substantial public interest concerns.[4] The Commission made clear in the *Streamlining Order* that the filing of comments "will not necessarily result in the application being deemed ineligible for streamlined processing."[5] Rather, applications will be removed from streamlined processing only if commenters or the Commission raise "significant public interest concerns requiring further Commission inquiry and resolution."[6] As examples of issues that might favor removing an application from streamlined review, the Commission gave "the control or exercise of market power and the promotion of competition in the local exchange market."[7]

Applicants have found only two cases in which the Wireline Competition Bureau has removed an application from streamlined treatment.[8] Neither of those cases is analogous to the situation here. In August 2003, the Wireline Competition Bureau ("WCB") concluded that an application filed by Touch America, Inc. and 360networks (USA), Inc. should be removed from streamlined review. In that case, the applicants had filed additional radio license transfer applications and a related request for waiver of 47 U.S.C. § 310(b)(4) subsequent to filing their Section 214 transfer application. In its Public Notice, the WCB removed the application from streamlining on the ground that its analysis of the Section 310(b)(4) waiver request could not be completed before the date the 214 application would

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4 *In re Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, CC Docket No. 01-150, Report and Order, FCC 02-78 (rel. Mar. 21, 2002) ("*Streamlining Order*"), at ¶¶ 20-21.

5 *Id.*, at n. 39.

6 *Id.*, at ¶ 44; 47 C.F.R. § 63.03(c).

7 *Id.*, at ¶ 44.

8 The Wireline Competition Bureau's experience in this regard in consistent with that of the International Bureau ("IB"), which has a long experience with streamlined applications. In the IB's 1998 Biennial Regulatory Review, which expanded the classes of applications eligible for streamlined treatment, the IB noted that "applications eligible for streamlined processing are very rarely opposed, and those that are opposed are very rarely denied or conditioned." *In re 1998 Biennial Regulatory Review – Review of International Common Carrier Regulations*, IB Docket 98-188, Report and Order, FCC 99-51 (rel. Mar. 23, 1999).

be deemed granted under the streamlining rules.[9] In September 2002, the WCB removed from streamlining an application filed by One Call Communications, Inc. and OMCM, Inc. because, following the issuance of the WCB's initial Public Notice, the Enforcement Bureau released a Notice of Apparent Liability involving One Call. In so doing, the WCB stated that the enforcement action raised an issue that could impact its public interest analysis.[10]

Here, Verizon provides no legitimate reason to remove the Application from streamlined processing. Verizon does not allege (nor could it allege) that Applicants have made a non-routine waiver request, that the transfer described in the Application violates the Communications Act or the Commission's rules, that XO is not qualified to take control of the Allegiance operations, or that Applicants have not responded to Commission inquiries.[11] Nor do Verizon's comments raise a public interest concern that requires further Commission review.[12] Instead, as discussed in Section II below, Verizon's claims involve a potential dispute in Allegiance's ongoing bankruptcy proceedings. Verizon fails to show why it is appropriate or necessary for the Commission to speculate as to whether a dispute may ultimately arise, what issues would be raised in such a dispute, or, most importantly, why the resolution of such a hypothetical dispute is necessary as part of the Commission's public interest analysis of XO's qualifications to assume control of Allegiance.[13] Nor could Verizon make that showing, since its claims are more about gaining leverage in non-existent private commercial dispute than they are about matters properly brought before this Commission in this transfer proceeding. Accordingly, there is no reason to remove the Application from streamlined processing.

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9 *Acquisition of Assets of Touch America, Inc. by 360 Networks (USA) Inc.*, WC Docket No. 03-150, Public Notice: Notice of Removal of Domestic Section 214 Application from Streamlined Treatment, DA 03-2611 (rel. Aug. 6, 2003).

10 *Acquisition of Assets of One Call Communications, Inc. by OCMC, Inc.*, WC Docket No. 02-231, Public Notice: Notice of Removal of Domestic Section 214 Application from Streamlined Treatment, DA 02-2430 (rel. Sept. 26, 2002).

11 47 C.F.R. § 63.03(c)(i)-(iii).

12 47 C.F.R. § 63.03(c)(iv).

13 To the extent that any such hypothetical dispute arises in the future, such dispute will be addressed by the appropriate forum at that time.

In contrast, Allegiance's ongoing bankruptcy cases demand that the proposed transaction move forward as soon as possible. The transfer of Allegiance's operating subsidiaries to XO will eliminate the continuing uncertainty caused by Allegiance's bankruptcy and will enable the combined company to compete vigorously in the telecommunications market. Moreover, the proposed transaction is supported by the public interest.

The combination of Allegiance and XO will create the nation's largest competitive provider of national local telecommunications and broadband services with the largest network of nationwide collocations to regional Bell operating companies' networks of any other CLEC, and double the points of presence within the markets where both XO and Allegiance operate. As a result of these enhancements, the combined company will be better able to compete directly with the regional Bell operating companies and other companies in the nationwide local telecommunications services market. The combination of XO and Allegiance will also improve service to Allegiance's existing customers and will not result in any cessation or degradation of service for the existing customers of Allegiance. The combination of XO and Allegiance also enhances competition. The combined company will achieve economies of scale and scope which will enhance the combined companies' ability to roll out new products and services and expand into new markets. Therefore, removing the Application from streamlined processing would not serve the public interest because it would prevent Applicants from closing the transaction promptly, would delay the public interest benefits outlined above, would hamper Allegiance's reorganization, and could result in service disruptions to Allegiance's customers.

II. THERE IS NO ISSUE RIPE FOR DETERMINATION BY THE COMMISSION

Despite its attempt to disguise its claims as arising under the Communications Act, Verizon is in reality asking the Commission to adjudicate a theoretical Verizon commercial claim against Allegiance. Verizon's motive for doing so is clear: it hopes to delay the Commission's review of the Application and, in that way, delay any additional competition resulting from the combination of XO

and Allegiance, as well as exert pressure on Allegiance and Allegiance's creditors with regard to payment of pre-petition debt allegedly owed to Verizon by Allegiance. However, even were Verizon's commercial claims valid and timely (which they are not), their resolution will be properly addressed by the Bankruptcy Court.[14] Accordingly, the Commission should reject Verizon's abuse of the Commission's procedures and should approve the Application without delay.

The Bankruptcy Code requires the Bankruptcy Court to address all assumption and cure issues as part of the bankruptcy proceedings. Moreover, Verizon's assertion that the Bankruptcy Court "refused" to include language in the proposed Sale Order pertaining to the obligation of utilities to continue to provide tariffed services "precisely because it would deny Verizon rights under law" mischaracterizes the proceedings.[15] The Court did not "refuse" anything. In response to objections to that provision from some creditors, the Applicants and those creditors, including Verizon, mutually agreed to a full reservation of their respective rights on that issue.[16] Verizon's bankruptcy counsel specifically confirmed that understanding to the Bankruptcy Court.[17]

The Bankruptcy Court also emphasized during the hearing that it was not ruling on assumption and rejection issues in the hearing and that the resolution of those issues and any disputes arising the

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14 Applicants will not address the merits (or lack thereof) of Verizon's arguments in these Reply Comments because those arguments are irrelevant to the grant of the Application. However, Applicants do note that in addition to mischaracterizing the statements of the Bankruptcy Court, Verizon's Comments misstate the structure of the proposed transaction and the nature and status of the services that Allegiance purchases from Verizon. For example, Verizon's argument that its tariffs require the assumption of outstanding indebtedness prior to "an assignment or transfer of service" ignores the fact that the transaction between XO and Allegiance as currently structured involves no assignment of service arrangements that fall within the aegis of the Verizon tariffs cited in its Comments. As discussed in the Application, those Allegiance subsidiaries that currently provide telecommunications services will continue to provide those services after the consummation of the transaction. Moreover, Allegiance believes that few of the Verizon services purchased by Allegiance flow from the tariffs cited by Verizon because Allegiance has elected to take all of its physical collocation in the Northeast under Verizon's state tariffs. Not surprisingly, Verizon also fails to note that a substantial portion of its claim has been disputed by Allegiance, that Allegiance has approximately $29 million in pre-petition claims against Verizon, and that Verizon received payments that may be preferential and may violate the Bankruptcy Code. To the extent that a dispute does in fact become ripe in the future, it will of course be addressed in the proper forum.

15 Verizon Comments, at 4-5.

16 *In re Allegiance Telecom, Inc.*, Chap. 11 Case No. 03-13057, Hearing on Sale to Approve the Sale to Qwest Communication International Inc., Transcript ("Tr."), at 61-63 (Feb. 19, 2004). A copy of the relevant portions of the hearing transcript is appended as Attachment A.

17 Attachment A, Tr. at 63.

assumption and rejection process "is going to take place in the future."[18] Accordingly, there is no need and it would not be appropriate for the Commission to issue an anticipatory ruling as to what may or may not happen in the future.[19] Verizon seeks to do an end run around the established bankruptcy process and asks the Commission to aid it. The Commission should refuse to do so.

Moreover, there is no basis for Verizon to assert that the streamlined approval of the Application puts it at risk. As set forth in the Application, the reorganization process that will result in a transfer of control of Allegiance to XO is ongoing. Any bankruptcy disputes about assumption of contracts and related matters will be handled in due course in that proceeding, and the grant of the Application on streamlined basis will not in any way prejudge the outcome of those disputes. On the other hand, imposition of the condition requested by Verizon would do just that.

Even outside of the bankruptcy arena, it is well established that the Commission will not entertain private commercial disputes in the context of applications for transfer of control.[20] Verizon provides no reason why the Commission should depart from its well established policy of not injecting commercial disputes into transfer proceedings as opposed to being properly brought in other forums or in complaint proceedings. Indeed, Verizon fails to cite a single Commission case or a single section of the Communications Act in support of its position. Accordingly, the Commission should decline Verizon's request and refuse to adjudicate Verizon's claims in this proceeding.

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18 Attachment A, Tr. at 56.

19 Similarly the Commission should ignore Verizon's cited "authority." Although Verizon cites numerous telecommunications bankruptcy cases, none are relevant to the issues before the Commission. Indeed, Verizon cites only to cases in which the debtors and the incumbent local exchange carriers ultimately entered into settlement stipulation. As the Commission knows, settlements do not represent a finding by a court on the underlying facts or legal principles.

20 *In re Applications of Global Crossing Ltd. and GC Acquisition Limited*, IB Docket No. 02-286, Order and Authorization, DA 03-3121 (rel. Oct. 8, 2003), at ¶ 54 ("This proceeding is not the proper forum for interpreting the commercial contracts between Global Crossing and ACNI"); *In re Applications of Vodafone AirTouch, PLC, and Bell Atlantic Corporation*, 15 FCC Rcd 16507, n. 37 (2000) ("The Commission has consistently refused to interject itself into private matters, finding that a court, and not the Commission, is the proper forum for resolving such disputes") (citations omitted). *See also Regents of the University System of Georgia v. Carroll*, 338 U.S. 586, 602 (1950) (holding that the Commission is not the proper forum to litigate contractual disputes between licensees and others); *In re Applications of Arecibo Radio Corporation*, Memorandum Opinion and Order, 101 F.C.C. 2d 545, 548, ¶ 8 (1985) (because the Commission does not possess the resources, expertise or jurisdiction to adjudicate breach of contract questions fully, it normally defers to judicial decisions regarding the interpretation of contracts).

III. CONCLUSION

For the foregoing reasons, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by continuing streamlined treatment of the Application and by promptly granting the Application without conditions.

Respectfully submitted,

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ATTACHMENT A

EXCERPTS FROM TRANSCRIPT OF FEBRUARY 19, 2004 HEARING

determine if it is, in fact, highest and best without also determining at the same time whether 365, whether whatever contracts they have scheduled for assumption and assignment can, in fact, be assumed and assigned..

MR. CANTOR: Your Honor, I will start, which I think is the two simple answers, the first is what you had suggested, 365 assumption assignments we'll handle a little bit later when we

send out the notice when we get what the cure amounts are.

The issue here today is which is the highest and best offer. The relative question is, or the relevant question is, what is the relative value of the bids.

We did do a comprehensive analysis and the listed contracts to be assumed and assigned to Qwest were rejected under the Qwest contract and likewise, we did the same for XO. We

described this turn at the bidding procedure hearing.

It was approved and basically set forth in your order and that's exactly what we did.

I think the delta between Qwest's $5.2 million dollars is better in the analysis of where we thought the cost of the lease rejection damage claims were and the cost of the cure was compared to XO.

Taking into a bigger picture, do you want to talk about policy, we

started the case with the notion that Allegiance was a national local carrier that was there to further Congress's intention to engender competition in the local telephone markets.

We are now in the point of the case that we have had some of the other local exchange carrier cases where the ILECs are going to show up and take some positions as they relate to the

assumption and assignment of interconnection agreements and the assumption and assignment of tariffs.

One of the reasons that we structured the transaction the way we did was to give the company some of the best arguments that they have to transfer the tariffs, the right to use the ILECs wires at the rates that Allegiance is using them at and to transfer to a buyer with no disruption to our customers, which is going to be very important in order for us to close this sale.

There is more here in this objection than just the concern about

your Honor's ability to determine what's the highest and best bid, because I will be able to present to you that the delta between the two bids was about $5.2 million, if you want to get an idea of big numbers, just to get a sense of it, putting the ILECs contracts aside, the interconnection agreements and the tariff

agreements.

We are anticipating rejection damage claims from other contracts under the XO bid to be approximately 47-and-a-half million dollars with about $1 million of pure payments as it relates to those contracts.

THE COURT: And those will be made by the debtor?

MR. CANTOR: Those will be made by the debtor.

With respect to the interconnection agreements and tariffs agreements, there are disputes between Allegiance and the ILECs as to payables and receivables going forward, but in big pictures, there was about 45, 46 million

dollars owed under the interconnection agreements prepetition, about $40 million owed under the tariffs.

These are numbers that we pulled together late last night in order to give your Honor a sense of where we

are.

We have arguments that those numbers would be lower; that the dollars in the estate would be less; but if you take the top end there, I think that would give your Honor an opportunity to discern whether or not the sale of the company to XO in accordance with the terms of the agreement we have negotiated will be a fair and reasonable price.

There will be litigation in this court over whether or not the company needs to pay all those prepetition cure amounts.

The ILECs say we have to pay them and I think we have good and valid arguments that we don't, but, again, this is one of those issues that I don't think is on for today.

If we want to get into policy, the policy we should be thinking about here is whether or not we let the ILECs assert more control over the competitive

local and long distance service in this country.

THE COURT: What happens in the XO deal if there is a ruling for some reason these contracts can't be assumed?

Does the deal crater or is there an adjustment? How is that dealt with?

MR. CANTOR: Give me one moment, your Honor.

Your Honor, we need to distinguish between interconnection agreements and the tariffs.

The interconnection agreements we bear the risk that they can't be assumed and assigned, but those are executory contracts. They can be assumed and assigned. They are a contract between two parties.

If we pay the cure amount, which I think we are thinking to that end

is $45 million, we are comfortable taking that risk.

In the context of the deal with respect to tariffs, when we need to distinguish, we do not bear that risk. If we are unable to transfer the tariffs, XO must still close the deal and it is drafted that way because I do believe there is an issue on the tariffs. I don't believe there is an issue on the ICAs whether they could be executory contracts.

THE COURT: Obviously, I'm not suggesting one way or the other on this issue. I just want to know what the effect of these contracts and tariffs being assumable or not is on the transaction.

Let me ask you a couple more questions.

You were involved in the discussions during the auction where the effect of the contract treatment under both the Qwest deal and the XO deal were compared, the effects were compared?

MR. CANTOR: Yes, Judge.

THE COURT: And Mr. Dizengoff, were you also involved in those comparisons?

MR. DIZENGOFF: Yes, I was, your Honor.

THE COURT: And do you generally agree with Mr. Cantor's summary of the comparison that roughly five-and-a-half million dollars was the spread between the Qwest proposal and executory contracts and tariffs and the XO?

MR. DIZENGOFF: Yes, your Honor. In consultation with the Committee's other advisor, Hamlin and CTA, we were in general agreement with the debtor that the delta was reflected by that.

MR. SCHAEDLE: Your Honor, I just wanted to point out for the record, and it is not clear to me how this cuts based on what Mr. Cantor said, but I believe that there are significant issues to be litigated as to whether the tariffs

are linked to the interconnection agreement. We don't believe they can be separated.

I believe there is law, if you will, if the tariffs and executory contracts are in the bankruptcy. So it is possible the whole collection of interconnection agreement and tariffs has to stand tall together and I'm not sure how that relates to the presentation. I'm hearing some of this for the first time.

THE COURT: All right. I just want a general idea of how the contract as it evolved over the last few days and at the auction treats the contracts. I'm not suggesting how ultimately I would rule on assumption issues, okay.

Mr. Cantor, were you going to say anything else?

MR. CANTOR: Just in actuality that 5.2 million dollar difference between the two bids, that 5.2 million dollars is a difference, has a

consequence of how nonILEC, meaning nontariff, noninterconnection agreements were being handled, meaning with respect to the Qwest bid and the XO bid, there was no difference in the value of the rejection claims, the cure claims.

The difference actually arose from nonILEC contracts at Qwest.

THE COURT: All right. I'm going to deny this objection.

First, I think it is important to recognize that the order approving the sale procedures that I entered after approving it on the record on January 15, although it is approved a few days before then, laid out a procedure for dealing with executory contracts and leases that, in keeping with the nature of the proposed transaction, contemplated separate notice process and hearing process if disputes over the assumption of executory contracts could not be resolved.

And that process is going to take place in the future. It is not

being dealt with now.

No specific contracts are being assumed or rejected as part of this hearing.

So what SBC is focusing on is whether a sale transaction should be approved subject to that process at this point or delay the approval of that transaction. It could even be delayed until the contract assumption process is completed.

I don't believe the code requires that.

First, my January 15th order contemplated an auction process. The auction took place. The other bidder at the auction who obviously was quite interested in buying these assets and was well represented has not disputed that XO won the auction. The parties obtaining the objection, including the creditors.

agreed that XO won the auction.

In keeping with the January 15th order, the auction results should now be approved.

As far as whether this bid is the highest and best bid, the representation by counsel who analyzed the competing transactions are that as far as the ILEC agreements and tariffs are concerned, there was no material difference between Qwest and XO and, consequently, as far as the two bidders, the auction was concerned, this issue really was not an issue.

That leaves the ultimate issue as to whether the debtor should be sold or not, and in light of the amounts at stake, which, as far as the debtor's representations are concerned, would not exceed and might well be less than 85 to $95 million are concerned, a potential cure payment, the effect of assuming or rejecting these contracts is not so

material as to drive the whole course of the case as to i.e. whether there should be a sale or not.

And so the two issues that are before me today, that is whether there should be a sale or not and, secondly,

whether assuming that there should be a sale XO was the winning bidder concerned, there is no valid basis for saying that there should not be a sale or that someone other than XO was the winning bidder.

Parties to executory contracts are in a somewhat awkward position in cases like this that Congress put them in because the contracts are assets of the estate and the debtor does not have to disclose in advance of the process or assuming or rejecting contracts allow the value of those assets to the contracting party.

That's something that you can choose to do in negotiating whether the

contract can be assumed or assigned on a consensual basis or not, but Congress gave debtor discretion on how to deal with executory contracts in that fashion, recognizing, of course, ultimately, if they do choose to assume a contract, it is not done on a consensual basis. The debtor has to satisfy all the

requirements of Section 365.

And, as I think the debtor will address next and I want to hear next, how the debtor proposes to do that moving forward, but I don't think that's the issue that SBC has raised. It is more an issue that Verizon has raised. So for that reason I will deny the SBC objection.

MR. CANTOR: Thank you, judge.

MR. TOGUT: Albert Togut, Togut, Segal and Segal. We are co-counsel for the debtors.

And we rise in connection with

the objections that were made by Verizon, Above Net, AT&T, Bell South and anyone else concerned about the 363 rights.

As your Honor has just commented, we are here pursuant to a sale application under Section 363, and Section 363 is not a provision of the Bankruptcy Code that deals with the assumption and assignment of executory contracts. 365 does that. We have not

made the 365 application. It is not before you today.

My purpose in rising is to say that those 365 rights will be reserved on both sides, on the debtor's side and on the other contracting parties side.

Those issues passed through. They are not affected by what's happening today. They won't be impacted in any way by the order.

We are working on finalizing language for the reservation of rights. The concept I'm giving you is something

we are all agreed to.

THE COURT: When you say you are working, you are working with the ILECs?

MR. TOGUT: We are.

THE COURT: Not just with XO but with the ILECs?

MR. TOGUT: Yes, your Honor, and we are just finalizing that language, which you will see in the order presented.

But, fundamentally, it is a

reservation of rights and a clarification that the 365 issues are not being dealt with today. They will be dealt with at a later date.

They will either be a separate application or something will be done no later than 20 days before any confirmation order is entered and that's it.

THE COURT: I guess Verizon has taken the lead in this, although,

obviously, others joined in the objection.

Assuming that you agree on the reservation of rights and what Mr. Togut said is obviously not written down but it is pretty clear that the intention is to reserve rights fully on both sides, is there any remaining objection?

I saw the other changes that are proposed to the order, which I think cleaned it up, but is there any other objection given that reservation?

MR. TOGUT: I don't believe so, your Honor.

THE COURT: Someone is standing behind you.

MR. CURRIE: Good afternoon. Andrew Currie from the law firm of Wilmer, Cutler, Pickering on behalf of Verizon. I believe what Mr. Togut has indicated is correct.

By the way, we have filed a pro hoc request and paid the fee. So I

just wanted to point that out, first.

And we have proposed language. We don't have final approval from Verizon on the exact language but the concept is accurately described and we are hopeful we will be able to bridge the gap, so.

MR. TOGUT: Thank you, your Honor.

THE COURT: Someone else wants to say something.

MR. D'AURIA: Your Honor, Peter D'Auria from Lowenstein Sandler on behalf of AT&T.

If I may just briefly say we are in agreement with the presentation

made by Mr. Togut and Verizon.

THE COURT: I trust you can all agree on language but, if not, I will put in a reservation based on what you send me but I understand the concept.

One point I wanted to make though is that I was comfortable with the

CERTIFICATE OF SERVICE

I, Ivonne Diaz hereby certify that on this 26th day of March 2004, true and accurate copies of the foregoing Reply Comments of Allegiance Telecom, Inc. and XO Communications, Inc. were served by First Class U.S. Mail upon the following parties:

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